

REMARKS

By this amendment, no claims have been added or cancelled. Claims 1 and 8 have been amended. Hence, Claims 1-14 are pending in the application.

SUMMARY OF THE REJECTIONS/OBJECTIONS

Claims 1-14 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent Number 6,304,898 issued to Shiigi (“*Shiigi*”) in view of U.S. Patent Number 6,304,898 issued to Hanson et al. (“*Hanson*”).

The rejections are respectfully traversed.

RESPONSE TO REJECTIONS UNDER 35 U.S.C. § 103(a)

The prior art, even if properly combined, fails to teach, disclose, or suggest, the combination of elements featured in amended Claims 1 and 8.

Amended Claims 1 and 8 each feature:

“establishing a first connection between a mobile device and a gateway using a first protocol;
wherein said mobile device supports said first protocol but not a second protocol;
wherein said online community is associated with a server that supports said second protocol but not said first protocol;
receiving user input that indicates said opinion through user interface controls on said mobile device;
transmitting, from said mobile device to said gateway, opinion data indicating said opinion, in a message that is not addressed to any specific member of the community, using said first protocol;
transmitting said opinion data, using said second protocol, from said gateway to said server;
storing said opinion data as part of survey results at said server, wherein said survey results reflect opinion data from a plurality of members of the online community; and
transmitting said survey results, using said second protocol, from said server to members of said online community in response to requests received by said server in said second protocol”

The above combination of elements is not shown, disclosed, or suggested by the cited art, either individually or in combination.

The pending claims describe an approach that enables, for example, users of a WAP-enabled mobile phone to enter opinion information into their WAP phones immediately after an event that is the subject of a survey, even though a Web server that uses a protocol not supported by the phones manages the survey data. *Shiigi*, on the other hand, is directed towards a handwriting server component operable on a network with an email host server, and a client component operable with an email client on a client computer connected to the network. Handwritten or hand drawn input is captured at the client component and sent as pixel data or an attached graphic file with an email message to the server component (Abstract).

There are significant distinctions between the pending claims and the approaches of the cited art. The pending claims feature an approach wherein opinion data, which indicates an opinion, is transmitted, from a mobile device to a gateway, in a message that is not addressed to any specific member of a community. In sharp contrast, the approach of *Shiigi* requires that an email message, addressed to a specific recipient, be sent from a client computer 510 to a SMTP gateway 520. The accompanying description of Step 5 of FIG. 4A in *Shiigi* makes clear that “the user clicks on a name from the list of active users to identify the user to whom they want to send a message” (Col. 8, lines 48-49).

This distinction is important because, while the approach of Claim 1 is directed towards transmitting opinion data to be stored as part of survey results, to the extent that the approach of *Shiigi* involves transmitting an email that expresses an opinion, that opinion is not intended to be stored as part of survey results, but rather is intended to be received by a single recipient.

Thus, it is respectfully submitted that *Shiigi* does not show the element of “transmitting, from said mobile device to said gateway, opinion data indicating said opinion, in a message that is not addressed to any specific member of the community, using said first protocol” featured in Claim 1.

Another distinction between the pending claims and the approaches taken by the cited art is that the pending claims feature an approach wherein opinion data, from a plurality of members of an online community, is stored as part of survey results. Advantageously, this allows numerous users, each using a mobile device, to participate in the online survey.

Contrary to the approach of the pending claims, *Shiigi* fails to show the element of “storing said opinion data as part of survey results at said server, wherein said survey results reflect opinion data from a plurality of members of the online community.” At best, *Shiigi* discloses storing a plurality of emails that each may contain content that expresses an opinion, but no portion of *Shiigi* discloses storing opinion data as part of survey results. Indeed, the Office Action acknowledges “*Shiigi*, however, fails to expressly disclose the use of the email messages as part of survey results for the online community to read and reply.”

In view of *Shiigi* acknowledged deficiencies in showing the pending claims, the Office Action notes that *Hanson* “discloses communication network that receives and distributes messages such as polls and surveys through the form of email among a group of participants connected to the network/server.” Assuming, *arguendo*, that this assertion is true, *Hanson* still would not disclose, teach, or suggest numerous elements of Claim 1.

For instance, *Hanson* does not disclose, teach, or suggest the element of “transmitting, from said mobile device to said gateway, opinion data indicating said opinion, in a message that is not addressed to any specific member of the community, using said first protocol” because, in the approach of *Hanson*, when one fills out a poll, one must expressly indicate a set of email addresses to which the results of the poll are sent. For example, field 903 on FIG. 11 is a field for entering one or more email addresses. The results of the poll are emailed by the server to those email addresses entered into field 903 (See Col. 15, lines 36-38, and Col. 9, lines 34-40). Thus, to the extent that data entered into the live electronic form 900 of FIG. 11 constitutes opinion data, the opinion data is transmitted in a message that expressly identifies (in field 903) the specific members of the community to which the message is to be delivered.

Further, as *Hanson* fails to disclose, teach, or suggest opinion data as claimed, it follows that any element that features opinion data cannot be disclosed, taught, or suggested by *Hanson*. Thus, *Hanson* cannot disclose, teach, or suggest the elements of “transmitting said opinion data, using said second protocol, from said gateway to said server” and “storing said opinion data as part of survey results at said server, wherein said survey results reflect opinion data from a plurality of members of the online community” as featured in Claim 1.

As at least one element is not disclosed, taught, or suggested by the cited art, either individually or in combination, it is respectfully submitted that Claim 1 is patentable over the cited art, and is in condition for allowance. As each of Claims 2-14 contain elements similar to those discussed above with respect to Claim 1, it is respectfully submitted that each of Claims 2-14 are also in condition for allowance for at least the reasons given above with respect to Claim 1.

SHIIGI AND HANSON NOT PROPERLY COMBINED

The Office Action states that it would have been obvious to “one of ordinary skill in the art at the time the invention was made to modify *Shiigi*’s apparatus to be able to allow user user [sic] to conduct surveys and received feedback, as taught by *Hanson*.” However, notwithstanding the fact that neither *Shiigi* nor *Claim* disclose numerous claim features, such as “transmitting, from said mobile device to said gateway, opinion data indicating said opinion, in a message that is not addressed to any specific member of the community, using said first protocol,” the Applicants respectfully submit that there is nothing in either *Shiigi* or *Hanson* that teaches or suggests combining their respective teachings.

As stated in the Federal Circuit decision *In re Dembiczak*, 50 USPQ.2d 1617 (Fed. Cir. 1999), (citing *Gore v. Garlock*, 220 USPQ 303, 313 (Fed. Cir. 1983)), “it is very easy to fall victim to the insidious effect of the hindsight syndrome where that which only the inventor taught is used against its teacher.” *Id.* The Federal Circuit stated in *Dembiczak* “that the best defense against subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or suggestion to combine prior art references.” *Id.* Thus, the Federal Circuit explains that a proper obviousness analysis requires “***particular factual findings*** regarding the locus of the suggestion, teaching, or motivation to combine prior art references.” *Id.* (emphasis added).

In particular, the Federal Circuit states:

“We have noted that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved...although ‘the suggestion more often comes from the teachings of the pertinent references’...The

range of sources available, however, does ***not diminish the requirement for actual evidence***. That is, the ***showing must be clear and particular***...Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” *Id.* (emphasis added; internal citations omitted).

Neither *Shiigi* or *Hanson* show any suggestion, teaching, or motivation to combine their teachings, nor does the Office Action provide a “clear and particular” showing of the suggestion, teaching, or motivation to combine their teachings. In fact, the only motivation provided in the Office Action is the hindsight observation that by combining features of those references, one may achieve the benefits achieved from the invention as described and claimed in the application. While the Office Action cites *Hanson* (at Col. 2, lines 64-67, and Col. 3, lines 1-8) to allegedly show the motivation of broadening “the utility and capability of *Shiigi*’s wireless email apparatus, allowing mobile users to also perform interactive activities such as completing a poll of interest, voting in an election, sporting event pool, purchase authorization, and other surveys of interest to the user,” the cited portion of *Hanson* does not in any way (a) suggest how the approach of *Hanson* may be enhanced by allowing a user to enter handwritten or hand drawn input, or (b) how the system of *Shiigi* can be combined in the system of *Hanson*. It is respectfully submitted that such a hindsight observation is not consistent with the Federal Circuit’s requirement for “particular factual findings.”

CONCLUSION

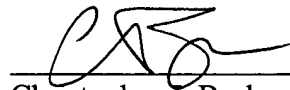
For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any fee shortages or credit any overages Deposit Account No. 50-1302.

Respectfully submitted,

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